

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL GOMA,

Plaintiff,

v.

AMERICAN SEAFOODS COMPANY, LLC
and NORTHERN HAWK, LLC in personam;
et al.,

Defendants.

C07-2077Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's motion to compel, docket no. 27, is DENIED IN PART and STRICKEN IN PART as follows.

(a) Plaintiff's motion to compel a response to Interrogatory No. 5, asking in relevant part whether "defendant or any one acting on its behalf conducted a surveillance of the plaintiff," is denied. The interrogatory seeks information protected from disclosure by the work product doctrine. *See* Fed. R. Civ. P. 26(b)(3); *see also Fletcher v. Union Pac. R.R. Co.*, 194 F.R.D. 666, 670 (S.D. Cal. 2000); *MacInvor v. S. Pac. Transp. Co.*, 1988 WL 156743 at *2 (D. Or.). Plaintiff would be entitled to such discovery in only two circumstances: (i) if defendant intends to proffer surveillance results as either substantive or impeachment evidence; *see MacIvor*, 1988 WL 156743 at *2 (directing the defendant to produce any surveillance materials it intended to offer as substantive evidence); *see also Forbes v. Hawaiian Tug & Barge Corp.*, 125 F.R.D. 505, 508 (D. Haw. 1989) (requiring the production of surveillance movies, provided that the impeaching character was preserved via, for example, allowing the defendant to conduct a post-film, pre-disclosure deposition of the plaintiff); *compare Harrison v. Taiwan Super Young Co.*, 1997 WL 3627 (9th Cir.) (affirming the admission of a "day-in-the-life" videotape, which was not disclosed before trial, as impeachment evidence); or (ii) if defendant does not intend to introduce such evidence, but plaintiff satisfies the "substantial need" and "undue hardship" standards

1 permitting the piercing of the work product privilege; see Fed. R. Civ. P. 26(b)(3)(A)(ii); see
2 also Fletcher, 194 F.R.D. at 670-71. On this record, plaintiff has not met the criteria for
3 forcing defendant to disclose work product that it does not anticipate using at trial. To the
4 extent defendant intends to offer surveillance results as either substantive or impeaching
5 evidence, defendant shall provide notice to plaintiff by the dispositive motions filing
6 deadline. Defendant shall make all surveillance materials that it intends to use as evidence
7 available for plaintiff's counsel's inspection at least thirty (30) days before the mediation
8 deadline.

9 (b) Plaintiff's motion to compel production of "all crew lists in effect
10 aboard the vessel for September 2007" is STRICKEN as moot. Defendant has provided the
11 requested crew list as Exhibit 7 to its response brief. Plaintiff's request for inter alia names,
12 addresses, and telephone numbers is worded in the alternative, to be produced only if "crew
13 lists were not maintained."

14 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
15 record.

16 Filed and entered this 9th day of September, 2008.

17 BRUCE RIFKIN, Clerk

18 s/ Claudia Hawney
19 By _____

20 Claudia Hawney
21 Deputy Clerk
22
23
24
25
26